(B) The exemption does not apply to investigative records maintained by a DON activity having no criminal law enforcement duties as one of its principle functions; or investigative records compiled by any element concerning an individual's suitability, eligibility; or, qualification for duty, employment, or access to classified information, regardless of the principle functions of the DON activity that compiled them.

(2) Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. They are:

(i) ''(k)(1)'': Information which is properly classified under E.O. in the interest of national defense or foreign policy.

NOTE: All DOD systems of records that contain classified information automatically qualify for (k)(1) exemption, without establishing an exemption rule.

(ii) ''(k)(2)'': Investigatory material compiled for law enforcement purposes, other than material within the scope of exemption (j)(2). If an individual is denied any right, privilege, or benefit that he would otherwise be eligible, as a result of such material, such material shall be provided to such individual, except to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to 27 September 1975 under an implied promise that the identity of the source would be held in confidence.

(iii) ''(k)(3)'': Information maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18.

(iv) ''(k)(4)'': Information required by statute to be maintained and used solely as statistical records.

(v) ''(k)(5)'': Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(vi) ''(k)(6)'': Testing and evaluation material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(vii) ''(k)(7)'': Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(f) *Detailed analysis of PA exemptions.* A detailed analysis of each exemption can be found in the Department of Justice's (DOJ's) ''Freedom of Information Act Guide & Privacy Act Overview'' that appears on *http://www.privacy.navy.mil.*

§ 701.114 PA enforcement actions.

(a) *Administrative remedies.* Any individual who alleges that he/she has been affected adversely by a DON activity's violation of 5 U.S.C. 552a and this subpart may seek relief from SECNAV through administrative channels. It is recommended that the individual first address the issue through the PA coordinator having cognizance over the relevant records or supervisor (if a Government employee). If the complaint is not adequately addressed, the individual may contact CNO (DNS–36) or CMC (ARSF), for assistance.

(b) *Civil court actions.* After exhausting administrative remedies, an individual may file a civil suit in Federal court against a DON activity for the following acts:

(1) *Denial of an amendment request.* The activity head, or his/her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record.

(2) *Denial of access.* The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his/her request for a copy of the record.

(3) *Failure to meet recordkeeping standards.* The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record.

(4) *Failure to comply with PA.* The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation issued under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Civil remedies.* In addition to specific remedial actions, 5 U.S.C. 552a provides for the payment of damages, court costs, and attorney fees in some cases.

(d) *Criminal penalties.* 5 U.S.C. 552a authorizes criminal penalties against individuals for violations of its provisions, each punishable by fines up to $5,000.

(1) *Wrongful disclosure.* Any member or employee of DON who, by virtue of his/her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a, this subpart or subpart G.

(2) *Maintaining unauthorized records.* Any member or employee of DON who willfully maintains a system of records for which a notice has not been approved and published in the FEDERAL REGISTER.

(3) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses.

(e) *Litigation notification.* Whenever a complaint citing the PA is filed in a U.S. District Court against the DON or any DON employee, the responsible DON activity shall promptly apprise CNO (DNS–36)) and provide a copy of all relevant documents. CNO (DNS–36) will in turn apprise the DPO, who will apprise the DOJ. When a court renders a formal opinion or judgment, copies of the judgment and/or opinion shall be promptly provided to CNO (DNS–36). CNO (DNS–36) will apprise the DPO.

§ 701.115 Protected personal information (PPI).

(a) *Access/disclosure.* Access to and disclosure of PPI such as SSN, date of birth, home address, home telephone number, etc., must be strictly limited to individuals with an official need to know. It is inappropriate to use PPI in group/bulk orders. Activities must take action to protect PPI from being widely disseminated. In particular, PPI shall not be posted on electronic bulletin boards because the PA strictly limits PPI access to those officers and employees of the agency with an official need to know.

(b) *Transmittal.* In those instances where transmittal of PPI is necessary, the originator must take every step to properly mark the correspondence so that the receiver of the information is apprised of the need to properly protect the information. For example, when transmitting PPI in a paper document, FAX, or E-Mail, it may be appropriate to mark it ''FOR OFFICIAL USE ONLY (FOUO)—PRIVACY SENSITIVE. Any misuse or unauthorized disclosure may result in both civil and criminal penalties.'' When sending a message that contains PPI, it should be marked FOUO. It is also advisable to inform the recipient that the message should not be posted on a bulletin board. In all cases, recipients of message traffic that contain PPI, whether marked FOUO or not, must review it prior to posting it on an electronic bulletin board.

(c) *Collection/maintenance.* The collection and maintenance of information retrieved by an individual's name and/or personal identifier should be performed in compliance with the appropriate PA systems of record notice (see *http://www.privacy. navy.mil*). If you need to collect and maintain information retrieved by an individual's name and/or personal identifier, you must have an approved PA systems notice to cover that collection. If you are unsure as to whether a systems notice exists or not, contact the undersigned for assistance.